

Office of Chief Counsel
Internal Revenue Service

memorandum

CC:MSR:KSM:KCY:TL-N-872-00
DRonnen

date: APR 21 2000

to: Chief, Examination Division, Kansas-Missouri District
Attn: David Moser, District Technical Coordinator

from: Associate District Counsel, Kansas-Missouri District, Kansas City

subject: [REDACTED]; Question of Barred Statute
SSN: [REDACTED]

In response to your request for advice dated February 10, 2000, it is our opinion that the assessment statute of limitations for [REDACTED] and [REDACTED] did not commence upon the submission of the joint returns on [REDACTED]. The Tax Court in Beard v. Commissioner, 82 T.C. 766 (1984), set forth a four-part test for determining whether a return is sufficient for statute of limitations purposes:

First, there must be sufficient data to calculate tax liability; second, the document must purport to be a return; third, there must be an honest and reasonable attempt to satisfy the requirements of the tax law; and fourth, the taxpayer must execute the return under penalties of perjury.

Id. at 777. Based on your description of the joint returns submitted on [REDACTED], they apparently meet all four tests. However, the filing requirements were not met.

I.R.C. § 6501(a) provides that the amount of any tax shall be assessed within three years after the return was filed, but does not define the word "filed." The statutory requirements for filing returns are contained in section 6091. Section 6091(b)(1)(A) provides the general rule that the return of a person other than a corporation shall be made to the Secretary "(i) in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or (ii) at a service center serving the internal revenue district referred to in clause (i), as the Secretary may by regulations designate." Section 6901(b)(4) provides that a hand-carried return shall be made in the internal

revenue district referred to in section 6091(b)(1)(A)(i). Treas. Reg. § 1.6091-2(d)(1) further clarifies as follows:

Returns of persons other than corporations which are filed by hand carrying shall be filed with the district director (or with any person assigned the administrative supervision of an area, zone or local office constituting a permanent post of duty within the internal revenue district of such director) as provided in paragraph (a) of this section.

It does not appear that the agent who received the returns on [REDACTED] is an official covered by this regulation.

Our position is supported by the case of Espinoza v. Commissioner, 78 T.C. 412, 419 (1982), where the Tax Court stated as follows:

In Lucas v. Pilliod Lumber Co., 281 U.S. 245, 249 (1930), the Supreme Court declared that "meticulous compliance by the taxpayer with all named conditions" is necessary to start the running of a statute of limitations on assessment. See also Florsheim Bros. Dry Goods Co. v. United States, 280 U.S. 453 (1930). In addition, it has been held that the hand delivery of a return to an IRS agent does not constitute the filing of a return. See W.H. Hill Co. v. Commissioner, 64 F.2d 506 (6th Cir. 1933), affg. 23 B.T.A. 605 (1931); O'Bryan Bros. v. Commissioner, 127 F.2d 645 (6th Cir. 1942), affg. 42 B.T.A. 18 (1940).

It is unclear whether the returns received by the agent on [REDACTED] were forwarded to the District Director. [REDACTED] (b)(7)a, (b)(7)c

[REDACTED] (b)(7)a, (b)(5)(DP)

Since no further action is currently required of this office, we are closing our file. If you have any questions, please call the undersigned at 816/283-3046, ext. 109.

(Signed) DENNIS R. ONNEN

DENNIS R. ONNEN
Senior Attorney